IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SAMUEL F. WATSON, SR., ELLEN WATSON, and SAMUEL F. WATSON, JR., Plaintiffs,	
v.	Civil Action No. 96-7182
THE BOROUGH OF DARBY, EDWARD SILBERSTEIN, DOMINIC DELLABARBA, and MARK DELLA VECCHIO, Defendants.	

Gawthrop, J. December 29, 1998

M E M O R A N D U M

Before the court after plaintiff's verdicts totaling $508,250, are defendants' motions for a judgment as a matter of law, for a new trial, or for a reduction in the amount of the verdict.

Background

The plaintiff, Samuel F. Watson, Jr.,[1] and Nancy Silberstein Watson were married in 1991 and had two children, before the marriage ended four years later. The divorce was rocky, and Nancy obtained a Protection From Abuse order. She then became romantically involved with one Mark Della Vecchio, a Darby Borough police officer and a co-worker of her brother, Officer

[1] All references to Samuel Watson refer to this plaintiff and not to his father, Samuel F. Watson, Sr., whose claims I dismissed before trial.

Edward Silberstein, Jr. By October 1995, Officer Della Vecchio, Nancy Watson, and the children shared a roof in Collingdale.

From time to time, Officer Della Vecchio, beckoned by Nancy Watson, would make his presence known, sometimes in uniform and displaying badge, at the children's various sporting events. On some occasions Samuel Watson would also be in attendance as the children's temporary custodian. He testified that he felt menaced by Officer Della Vecchio's uniformed appearance at these events.

So also, Officer Silberstein, along with Officer Dominic Dellabarba, investigated one of his sister's complaints that Samuel Watson had violated the Abuse order. The officers filed a formal complaint alleging Samuel Watson had committed indirect criminal contempt, which filing caused an arrest warrant to issue and the Upper Darby Police later to arrest and handcuff him in front of his children. As to these events, Samuel Watson testified at trial that his only contact with Nancy on that day occurred when he turned the children over to her at her father’s ice cream parlor, without incident.

The matter was scheduled for trial before a District Justice, but became repeatedly postponed for lack of prosecution witnesses: notably, Officers Silberstein and Dellabarba failed to respond to five different subpoenas. Officer Silberstein testified that he did not know of the scheduled court

appearances, however his sister and Officer Della Vecchio did appear a number of times for which the hearings were scheduled. The evidence revealed that attempts to serve subpoenas at the Darby Police Department were unsuccessful, as the people at police headquarters refused to pass the subpoenas along to the officers.

These dealings with the Darby police caused Samuel Watson to fear arrest if he visited his children. Further, because he worked as an airline mechanic, in which occupation there is great emphasis on quality control, both as to the quality of work product, as well as to the quality of the workers themselves, he feared that additional arrests could cost him his job. He thus forewent seeing his children for three months.

The officers eventually did appear for a hearing, at which the contempt proceedings were dismissed. After the hearing, Samuel Watson and his mother went to visit his children at the Collingdale home. Because he expected there might be trouble, he had called the Collingdale police before they went and told them where they were headed, but he did not tell Nancy Watson that they would be coming over. After he arrived, he and Nancy argued, causing her to page Officer Della Vecchio with a 911 code. The officer, on uniformed duty, and located just across the Collingdale-Darby line, raced home and told Samuel Watson that: “you cannot see those children.” Moments later, the

Collingdale police arrived in response to Samuel Watson's call, and they ultimately resolved the situation amicably. As to this incident, Samuel Watson takes the position that Officer Della Vecchio was acting in his official capacity, and in so doing ran roughshod over his constitutional rights.

The jury returned a verdict of $500,000 against the Borough of Darby and in favor of Samuel Watson, of no compensatory damages against any police officer individually, and of $8,250 in punitive damages[2] against the three police officers, and in favor of Samuel Watson. The jury found for the defendants on the claims of Samuel Watson's mother, which verdict is not challenged.

Discussion

Defendants argue that there should not have been a plaintiff's verdict, that the verdict was excessive, and that there was reversible trial error. Thus they argue that judgment as a matter of law, a new trial, or a remittitur is appropriate.

A court can grant a new trial "for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States," Fed. R. Civ. P. 59(a)(1), including where "the verdict is contrary to the great weight of the evidence." Roebuck v. Drexel Univ., 852 F.2d 715, 735 (3d

[2] The jury assessed $5000 in punitive damages to Officer Silberstein, $2500 to Officer Della Vecchio, and $750 to Officer Dellabarba.

Cir. 1988). Although the decision to grant or deny a motion for a new trial "is confided almost entirely to the discretion of the district court," Blancha v. Raymark Indus., 972 F.2d 507, 512 (3d Cir. 1992); see Allied Chem. Corp. v. Daiflon, Inc., 449 U.S. 33, 36 (1980), a court's discretion is more limited when granting a new trial because the jury's verdict is against the weight of the evidence. Hourston v. Harvlan, Inc., 457 F.2d 1105, 1107 (3d Cir. 1972); Valentin v. Crozer-Chester Med. Ctr., 986 F. Supp. 292, 298 (E.D. Pa. 1997). A new trial "cannot be granted . . . merely because the court would have weighed the evidence differently and reached a different conclusion." Markovich v. Bell Helicopter Textron, Inc., 805 F. Supp. 1231, 1235 (E.D. Pa. 1992). A court may, however, grant a new trial if it finds that the verdict is against the great weight of the evidence or if the amount of the verdict is so excessive that is "shocks the conscience" of the court. Williamson v. Consolidated Rail Corp., 926 F.2d 1344, 1353 (3d Cir. 1991).

A. The Validity of the Verdict for Plaintiffs

My take on liability is that the jury unequivocally concluded that something was, if not rotten, certainly wrong, in the Borough of Darby. The jury was given a rather full picture of the internecine warfare going on among Darby’s dramatis personae, and the jury obviously concluded that these public officials, basically to back up one of their own, used and abused

their governmental powers to crimp Samuel Watson's civil rights substantially.

There are factual arguments going one way or the other, but those arguments were fully made to the jury, whose mission it was to resolve them; their verdict is entitled to great (although not absolute) deference at this juncture. Montgomery Ward v. Duncan, 311 U.S. 243 (1940); Calusinski v. Kruger, 24 F.3d 931 (7th Cir. 1994); Norris v. Lee, Civ. A. No. 93-441, 1995 WL 428669 at *6 (E.D. Pa. July 14, 1995). A verdict should be reversed only if the jury abused its discretion in a case where the evidence points "so strongly and overwhelmingly in favor of one party that the court believes that reasonable jurors could not arrive at any contrary conclusion." Baltazar v. Holmes, 1998 WL 846837 at *3 (5th Cir. Dec. 8, 1998); Shaffer v. Wilkes, 65 F.3d 115, 117 (8th Cir. 1995). The full record reveals support for the jurors' decision, and I would be overreaching to annul their considered conclusion as to who should prevail.

B. The Amount of the Verdict

The amount of the verdict is another matter. There was virtually no damages testimony, and an utter dearth of damages experts. There was neither an economic nor a vocational expert, neither a physician nor a psychologist. The plaintiff was content simply to rely upon the testimony of the plaintiff to tell the jury how these events affected--nay, traumatized--him.

Apparently, he communicated this to them very well.

In mentioning the sorts of experts he did not call, I do not suggest that every case, every sort of damages, needs an expert to spell those damages out. Some damages experts, in truth, are little more than high-priced window dressing. Others can be essential. It is thus not unusual for expert witnesses to come into court and propound some numbers which they say reflect the economic magnitude of an injury, to give the jury some reasoned calipers upon which to arrive at a number which is founded upon fact, logic, and the law. Here, where there is no expert evidence upon which to find firm foundation for a half-million-dollar-plus verdict, the verdict does tend to become more susceptible to attack.

A damage verdict when supported by proper evidence may not be set aside as excessive unless it is so high as to shock the conscience of the court, or unless it appears that the jury was biased or acted capriciously or unreasonably. Fed. R. Civ. P. 50; Griffiths v. Cigna Corp., 857 F. Supp. 399, 408 (E.D. Pa. 1994). A trial judge must be "extremely reluctant to interfere with the time-honored power of the jury, in the exercise of its collective judgment, to assess the damages sustained by the plaintiff." Tann v. Service Distributors, Inc., 56 F.R.D. 593, 598 (E.D. Pa. 1972). Remittitur is a "device employed when the trial judge finds that a decision of the jury is clearly unsupported and/or excessive" and falls within the discretion of

the trial judge who is "in the best position to evaluate the evidence presented and determine whether or not the jury has come to a rationally based conclusion." Spence v. Board of Educ., 806 F.2d 1198, 1201 (3d Cir. 1986).

Reviewing the case's facts, Samuel Watson says that he felt oppressed to see Officer Della Vecchio at sporting events all decked out in uniform and badge, peering over at him and his child. If the jury found that to be a constitutional transgression, it is not to be countenanced and is compensable. So also, the jury apparently found Samuel Watson's three-month hiatus in child visitation to have been defendants' fault, caused by the Darby police's harassment and threats to arrest him and a violation of the constitution. Three months without one's children is a vile absence to be forced to suffer. The whole pervasive atmosphere visited upon Samuel Watson by the Darby Police Department constitutes an array of events that one should not have to endure.

Adding all of these factors together, however, giving the plaintiff the benefit of all the evidence and all favorable inferences, as well as the most favorable reading of the law governing damages, I cannot tally up a total of $500,000 in compensatory damages. In my view, that considerable sum is just not in the case. It is with gingerly, genuine respect that I traipse into the jury's well-nigh-exclusive province. But on this record, even $100,000 would seem generous, and I shall

reduce the verdict to that amount.

I turn to the amount and validity of the punitive damages that the jury awarded. The defense argues that since no compensatory damages were found against the individual defendants, it follows even more strongly that there should not have been punitives. Punitive damages under § 1983 are limited to instances of "reckless or callous disregard for the plaintiff's rights, as well as intentional violations of federal law." Smith v. Wade, 461 U.S. 30, 51 (1983). This only requires "something more than a bare violation justifying compensatory damages or injunctive relief." Keenan v. City of Philadelphia, 983 F.2d 459, 470 (3d Cir. 1992). Here, there is enough for a jury to conclude that defendants' conduct, depriving Samuel Watson of his constitutional rights was done recklessly, and I hence shall not disturb the punitive damages award.

C. Questioning by the Court

The defendants argue that the court was too vigorous in asking some questions of Darby Borough Police Chief Smythe while he was on the stand. The questions were designed to clear up, or perhaps fill up, some apparent interstices in his memory.

The federal rules recognize that the judge may question a witness in this, or any other, circumstance. Fed. R. Evid. 614(b)("the court may interrogate witnesses, whether called by itself or by a party"); United States v. Henry, 136 F.3d 12 (1st Cir. 1998) (a court's right to question witnesses is

"undisputed"). Here, the inquiry was relatively brief and never objected to at trial. Absent an objection, any alleged error caused by court questioning is waived. See Fed. R. Civ. P. 46 ("it is sufficient that a party ... makes known to the court ... the party's objection to the action of the court and the grounds therefor"); Fed. R. Evid. 614(c) (providing procedure, outside hearing of the jury, for counsel to object to a judge's questioning); Kelley v. Airborne Freight Corp., 140 F.3d 335, 352 (1st Cir. 1998); Stillman v. Norfolk & Western Ry. Co., 811 F.2d 834, 839 (4th Cir. 1987). The defendants did not then object to the court's inquiring and thus may not now complain about it. Both substantively and procedurally, the questioning does not constitute reversible error.

An order follows.

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O R D E R

AND NOW, this day of December, 1998, Defendants' Motion for Judgment as a Matter of Law or for New Trial or for Modification of the Verdict is DENIED, but only in part: the amount of compensatory damages is remitted to $100,000. The plaintiff is granted 20 days from today's date to decide whether he will accept that reduced amount, or whether he wishes a new trial, in which latter event, the case will be listed for trial forthwith.

BY THE COURT:

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Robert S. Gawthrop, III J.